



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

DAVID C. HOLLISTER
DIRECTOR

Topic:	Statewide Registration of Auctioneers
Sponsor:	Representative Hopgood
Co-Sponsors:	Representatives Vagnozzi, Plakas, Polidori, Byrum, Kehrl, and Smith
Committee:	Regulatory Reform
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Date of Summary:	July 22, 2005

House Bill 4943 provides for the statewide registration of auctioneers. The term "Auctioneers" is added to the Commencement of Terms in the Occupational Code with a commencement date of January 1. Stricken from this list are the terms Athletic board of control, Marriage counselors, Nursing home administrators, and Social workers.

Article 28 is added to the Occupational Code pertaining to the registration of auctioneers. The bill defines "Auction," "Auctioneer," and "Depository." The bill creates a board of auctioneers. The bill also provides that no person can use the title "Registered Auctioneer" unless registered under this article. A corporation, partnership, limited liability company, association, or other legal entity may apply for registration if at least one of its officers, members, partners, or agents is a qualifying member. That qualifying member will be issued registration by the Department of Labor and Economic Growth upon fulfillment of the requirements of the newly added article. If the registration of the qualifying member is revoked, denied, or suspended, the Department will do likewise to the corporation, partnership, limited liability company, association, or other legal entity. If a qualifying member discontinues being a qualifying member of one of the aforementioned entities, an automatic suspension will occur. Upon request, a stay of suspension may be granted by the Department to allow reasonable period of time for an entity to qualify a new qualifying member. A person can not advertise or use the term "Registered auctioneer" that portrays that person as a registered auctioneer unless registered under the article established by this bill.

Exempt from the article are the following persons:

- A licensed dealer or broker selling livestock by auction who doesn't use the term "Registered auctioneer" unless otherwise registered.
- A licensed dealer selling motor vehicles by auction who doesn't use the term "Registered auctioneer" unless otherwise registered.
- A dealer or manufacturer who sells watercraft that is required to have a certificate of title, by auction, and doesn't use the term "Registered auctioneer" unless otherwise registered.

Registration by the Department will be issued to an individual or qualifying member provided that he/she meets all of the following requirements:

- Has either 2 years of apprenticeship experience with a registered auctioneer or proof of graduation from an accredited auction school acceptable to the board and 1 year of apprenticeship experience with a registered auctioneer.
- Has actively participated in at least 10 auctions with the experience validated by an affidavit by a registered auctioneer.
- Has completed an examination developed by the Department and the Board and administered on at least a quarterly basis, unless further needed, and in a manner provided for in section 316 and including, but not limited to, the following subject matter:
 - Provisions of the article.

- Ethics and ethical practices as they relate to the business of conducting auctions.
- Elementary mathematics.
- Elementary principles of real estate and personal property economics.
- Elementary principles of the law including bulk sales, deeds, mortgages, contracts of sale, agency, leases, auctions, and brokerage.

- Is of good moral character.

The bill provides that any person who pays money in connection with an auction to a registrant is considered to be held in trust for the benefit of the person making the payment. The registrant will be considered a trustee of the money.

The bill requires that a registered auctioneer maintain a regular place of business that is not a location used as a warehouse. If more than one place of business is maintained, the Department will issue duplicate registration free of charge.

The bill requires that a written contract, with a copy available for the Department to inspect when necessary, be executed between the persons desiring auction services and the registered auctioneer before the registered auctioneer can conduct an auction.

A registrant must keep written records of each auction sale for a period of at least 3 years from the date of the auction sale. The records must include the following:

- Consignment receipts.
- Bidder registrations.
- Documents relating to final settlements with cosignors.

A registrant must keep a record of all current and past employees. A registrant must keep a record of a past employee for a period of at least 3 years after that past employee leaves the employment of the registrant. The records must include name, address, SSN, and date of birth.

A registrant must clearly post a copy of the registration at regular place of business.

The bill requires that a registrant establish a custodial account that will be used to deposit all checks, drafts, negotiable instruments, and cash tendered by a buyer to pay for an item sold by auction. The registrant is not permitted to accept an advance payment to be deposited into a personal or business account of the registrant.

The custodial account must:

- Be interest bearing.
- Be in a departmentally recognized depository.
- Be under the registrant as the custodian or trustee.
- Provide for withdrawal of money without notice.
- Not contain money of the registrant not used for paying service charges on the account.

The bill permits disbursements from the custodial account for:

- Payment for a sale.
- Refund when necessary.
- Payment to registrant for commission and approved expenses.

The bill requires that the registrant to keep records of money deposited that shows:

- The date of receipt.
- Name of customer.
- Purpose of payment.
- Date of deposit.

- Date and purpose of withdrawal.
- Name of person to whom money was paid upon withdrawal.
- Any other important information regarding the transaction.

The bill permits the Department to inspect such records.

The bill requires the Department to establish an exam for registration of applicants that includes the following:

- Provisions of the article.
- Ethics in conducting auctions.
- Elementary mathematics.
- Elementary principles of real estate and personal property economics.
- Elementary principle of law regarding bulk sales, deeds, mortgages, contracts of sale, agency, leases, auctions, and brokerages.

This exam will be administered on at least a quarterly basis and may be administered more frequently at the discretion of the Department.

The bill permits registration without examination to non-resident individuals who are registered by another state with similar requirements to that of this bill and if that state offers registration on a reciprocal basis to registrants.

Non-residents are to file an irrevocable consent to service of process signed by the registrant. A process or pleading service served upon the Department must be in duplicate and is sufficient service upon the registrant. A copy must be served via first class mail to the registrants last known address.

An individual will be registered as an auctioneer if that individual submits an affidavit attesting to experience in the conduct of auctions for at least three years before the effective date of this bill. Secondly, the applicant must also have conducted at least 12 auctions to be issued registration by the Department.

The bill deems the following acts as grounds for the penalties and sanctions already established in the article:

- Fails to enter into a written contract with a seller or cosignor before placing or authorizing any advertising for an auction.
- Fails to reduce to writing or fails to issue any appropriate documentation relative to an auction-related transaction.
- Fails to appropriately use or issue payment from a custodial fund.
- Is involved in capping, shilling, or steering relative to an auction.
- Fails to disclose his or her registration number on all advertising.
- Knowingly misrepresents the nature or value of an item being auctioned.
- Violates the requirements or a rule of this bill.

House Bill 4944 amends the "State license fee act" by adding section 28 to regulate registration fees for those registering as an auctioneer or those acting as an auctioneer. The bill establishes the following fees:

- \$30.00 application processing fee for registered auctioneer.
- \$35.00 examination fee for registered auctioneer.
- \$100.00 annual registration fee for an individual auctioneer.
- \$100.00 annual registration fee for an auctioneering firm.

House Bills 4943 and 4944 are tie-barred.